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COPYRIGHTS & CAMPAIGNS

BEN SHEFFNER'S NOTES ON COPYRIGHT, FIRST AMENDMENT, MEDIA, AND ENTERTAINMENT LAW, AND POLITICAL CAMPAIGNS

WEDNESDAY, MAY 20, 2009

Wired: New Jammie Thomas attorneys will attack labels' 'strategy'

The judge in the Jammie Thomas case has quickly granted permission for her to bring on a new team of lawyers, and they are promising that the re-trial of the accused Brainerd peer-to-peer infringer will be "a little more exciting" than the first. Only "a little"? It might take more than "a little more exciting" to lure C&C to Duluth!

David Kravets of *Wired* spoke today with Kiwi Camara, who gave a preview of the tactics his team will employ at the June 15 re-trial:

> "We are going for a jury verdict of zero.... We are going to convince a jury that the RIAA should not bring these cases.".... The young attorneys think the key to victory is to attack the RIAA's litigation strategy, which ha[s] spawned 30,000 lawsuits over five years, most of which have settled out of court for a few thousand dollars.
>
> "We think the jury is going to reject this strategy," Camara said. "The RIAA strategy here is not to try any of these cases."

It's hard to know exactly what Camara, a 24-year-old partner at Houston's Camara & Sibley, (he graduated from Harvard Law School at age 19!) intends from these brief snippets. But if he really intends to present evidence and argument about all of the *other* similar lawsuits brought by the major record labels, then I just don't see the relevance, and the court should exclude it.

The only issue for the jury is whether the plaintiffs can prove that Thomas infringed their copyrights, and, if so, how much in statutory damages is appropriate. (They succeeded in the first round back in October 2007, convincing a jury to award them $222,000, only to have that verdict overturned when the judge decided one of his jury instructions was faulty.) So what if Camara (or Thomas) thinks the labels' lawsuits against individual p2p users was unfounded,

ABOUT THIS BLOG AND ME

Welcome to Copyrights & Campaigns. This blog intends to provide news and analysis of copyright, First Amendment, and related issues from a pro-copyright-owner perspective, with emphasis on the interaction of these issues with campaigns and the political process.

Ben Sheffner is a copyright/First Amendment/media/entertainment attorney and former journalist. He worked as an associate at O'Melveny & Myers LLP, as Senior Counsel, Content Protection Litigation at Fox, and as Litigation Counsel at NBC Universal. From July-November 2008, Ben served as Special Counsel on Senator John McCain's presidential campaign where, among other responsibilities, he handled the campaign's copyright, trademark, and other IP issues. From 2006-2008, Ben served as Co-Chair of the Media Law Resource Center's California Chapter. Ben served as a law clerk to Judge M. Margaret McKeown of the U.S. Court of Appeals for the Ninth Circuit from 2000-2001.

Between college and law school, Ben worked as a political reporter in Washington, DC at Roll Call counterproductive, mean-spirited, or whatever other adjectives they can dream up? Whether the labels "***should***...bring these cases" (my emphasis) is an interesting question worthy of debate, but it's irrelevant to the issue at hand, and not a question the *Thomas* jury should consider. Look for a motion *in limine* seeking to preclude Thomas' counsel from introducing evidence or argument on the plaintiffs' overall litigation strategy, or other individual p2p cases.

Kravets' piece also notes that Camara's firm is representing Thomas *pro bono*, and that he and his co-counsel have long been ~~under the spell of~~ associated with a certain colorful Harvard Law School professor:

> Now the three former Harvard University classmates, Camera, Joe Sibley and former Netscape engineer Tim Nyberg, are stepping up to the plate for free. All three are former students of Harvard scholar Charles Nesson, the founder of the Berkman Center for Internet & Society at Harvard University.

I only hope that Professor Nesson instilled in them his penchant for "radical transparency"!

POSTED BY BEN SHEFFNER AT 4:18 PM
LABELS: COPYRIGHT, JAMMIE THOMAS

2 COMMENTS:

Ben said...

As a legal matter, I will defer to your judgment as to whether the other cases are relevant.
As a matter of moral principle, the number of people supposedly guilty under a particular interpretation of a law and fact is definitely a relevant factor for assessing the validity of that interpretation. (But then I'm an extremist on such points who believes speeding tickets are just a lottery tax.)

MAY 20, 2009 6:12 PM

DensityDuck said...

Ben: Over-broad legislation is a matter for the legislature, not the courts. The court is charged with determining the applicability of a law, and if the law is clearly-written then the applicability is also clear. Morally-driven leniency, to the extent that it applies to legal

newspaper, where he covered congressional elections, the term limits movement, campaign finance reform, and various other issues related to Congress' internal politics and administration. Before that, he was Assistant Editor of the Cook Political Report, where he covered campaigns for the House of Representatives and served as a consultant to CBS News during the 1994 election cycle, helping prepare producers and correspondents for the election night broadcast. A detailed bio is available here.

This is Ben's personal blog and does not necessarily represent the views of any past, present, or future clients or employers. Nothing herein constitutes legal advice.

Ben can be reached at copyrightsandcampaigns@gmail.com.

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"Big time copyright supporter," "support[er] of copyright insanity" -- ***Techdirt*** proceedings, happens in the sentencing.

MAY 21, 2009 10:10 AM

POST A COMMENT

Comments here are moderated. I appreciate substantive comments, whether or not they agree with what I've written. Comments that contain name-calling, personal attacks, or the like will be rejected. If you want to rant about how evil the RIAA and MPAA are, and how entertainment companies' employees and attorneys are bad people, there are plenty of other places for you to go.

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"Running dog...point man for the content cartel...pretend[er of] disinterest...ruin[er of] real peoples' lives." -- ***Recording Industry vs. The People***

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▼ 2009 (347)

▼ May (35)

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Does the 'management' include editors?

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Jammie Thomas' counsel seeks exit from case; accus...

Founding Bloggers' CNN critique: down an entire mo...

RealNetworks asserts antitrust claims against stud...

Sandy Levinson: 'Justice Margaret McKeown?'

Craigslist drops 'Erotic

Services'; a win for Sect...
No settlement in Jammie Thomas case; retrial set f...
Twelve business days after counternotice, why hasn...
Crimson takes on Tenenbaum case; reveals Nesson's ...
Main Justice confirms: DOJ recusal period is 2 yea...
Perez Hilton posts...and the mind reels
This week in Tenenbaum: computers, a non-motion, a...
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Inducement of infringement: Techdirt vs. 'the law'...
YouTube restores National Organization for Marriag...
NOM ad: if this isn't fair use, what is?
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MPAA adds anti-piracy litigators Mandil and Stone
Miss Universe pageant joins the copyright fun; pil...
Perez Hilton's cease and desist letter to NOM: ign...
Non-news update: labels file a trickle of individu...
National Organization for Marriage claims fair use...
Perez Hilton's copyright (mis) information page
THR, Esq: 'How much did piracy hurt Wolverine boxo...
But doesn't she have more

important things to do?
Gertner again rebuffs Nesson on recording; will th...
Perez Hilton, copyright cop? Blogger issues takedo...

▶ April (65)
▶ March (54)
▶ February (73)
▶ January (120)

▶ 2008 (11)

LABELS

china (1)
congress (12)
copyright (229)
defamation (16)
DMCA (35)
drm (8)
fair use (60)
First Amendment (86)
IP czar (26)
Jammie Thomas (5)
lessig (9)
media criticism (54)
nina paley (4)
Obama (66)
Perez Hilton (8)
perrelli (14)
politics (102)
right of publicity (16)
roesgen (6)
section 230 (11)
skank (7)
SLAPP (2)
technology (41)
tenenbaum (88)
trademark (2)

web video (45)

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